
SENATE BILL No. 100

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1-39-4.

Synopsis: Election of certain corporate directors. Permits certain corporations that have a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934 to elect in the corporation's bylaws to be governed in the election of directors by specified terms. (The current law on the subject states that the law does not apply to such corporations.) (The introduced version of this bill was prepared by the code revision commission.)

Effective: Upon passage.

Taylor

January 5, 2010, read first time and referred to Committee on Judiciary.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

SENATE BILL No. 100

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1-39-4, AS ADDED BY P.L.133-2009,
2 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 4. (a) This section ~~does not apply to any~~
4 ~~corporation that has~~ **applies only to corporations that have** a class of
5 voting shares registered with the Securities and Exchange Commission
6 under Section 12 of the Securities Exchange Act of 1934.

7 (b) Unless the articles of incorporation specifically prohibit the
8 adoption of a bylaw under this section, alter the vote specified in
9 IC 23-1-30-9(a), or provide for cumulative voting, a corporation may
10 elect in the corporation's bylaws to be governed in the election of
11 directors as follows:

12 (1) Each vote entitled to be cast may be voted for or against up to
13 that number of candidates that is equal to the number of directors
14 to be elected, or a shareholder may indicate an abstention, but
15 without cumulating the votes.

16 (2) To be elected, a nominee must have received a plurality of the
17 votes cast by holders of shares entitled to vote in the election at a



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meeting at which a quorum is present. However, a nominee who is elected but receives more votes against than for election shall serve as a director for a term that ends on the date that is the earlier of:

(A) ninety (90) days after the date on which the voting results are determined; or

(B) the date on which an individual is selected by the board of directors to fill the office held by the director, which selection constitutes the filling of a vacancy by the board to which IC 23-1-33-9 applies.

Subject to subdivision (3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period described in clause (A).

(3) The board of directors may select a qualified individual to fill the office held by a director who received more votes against than for election.

(c) Subsection (b) does not apply to an election of directors by a voting group if:

(1) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(2) absent a provision described in subdivision (1), at a time fixed by the board of directors that is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur;

there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual is not considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(d) A bylaw under which a corporation elects to be governed by this section may be repealed:

(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) if adopted by the board of directors, by the board of directors.

SECTION 2. An emergency is declared for this act.

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